

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

APRIL LAYTON, as Personal)
Representative of the Estate of)
Charles Holdstock, deceased,)
)
Plaintiff,)

vs.)

No. CIV-09-1208-C

)
BOARD OF COUNTY)
COMMISSIONERS OF THE)
COUNTY OF OKLAHOMA,)
STATE OF OKLAHOMA,)
)
Defendant.)

INSTRUCTIONS TO THE JURY

Instruction No. 1

OPENING

Members of the Jury, you have heard the evidence in this case and in a few minutes you will hear the arguments of counsel. It is now the duty of the Court to instruct you as to the law applicable to this case. You will be provided a written copy of these instructions for your use during deliberations.

You are the judges of the facts, the weight of the evidence, and the credibility of the witnesses. The weight of the evidence is not determined by the number of witnesses testifying on either side. In determining weight or credibility, you may consider the interest, if any, that a witness may have in the result of the trial; the relation of the witness to the parties; the bias or prejudice if any has been apparent; the candor, fairness, intelligence and demeanor of the witness; the ability of the witness to remember and relate past occurrences; the

witness's means of observation and the opportunity of knowing the matters about which the witness has testified; the inherent probability or improbability of the testimony; the extent to which the witness has been attacked by introduction of evidence that on a prior occasion the witness made an inconsistent statement; and the extent to which the witness has been supported or contradicted by other credible evidence. From all the facts and circumstances appearing in evidence and coming to your observation during the trial, and aided by the knowledge that you each possess in common with other persons, you will reach your conclusions.

The arguments and statements of the attorneys are not evidence. If you remember the facts differently from the way the attorneys have stated them, you should base your decision on what you remember.

It is my job to decide what rules of law apply to the case and all the applicable law is contained in these instructions. You must not follow some and ignore others. Even if you disagree or do not

understand the reasons for some of the rules, you are bound to follow them.

Instruction No. 2

BURDEN OF PROOF

The burden is upon the Plaintiff in a civil action such as this to prove every essential element of her claim by a preponderance of the evidence. If the proof should fail to establish any essential element of Plaintiff's claim by a preponderance of the evidence, the jury should find for Defendant.

To "establish by preponderance of the evidence" means to prove that something is more likely so than not so. In other words, a preponderance of the evidence means such evidence as, when considered and compared with that opposed to it, has more convincing force and produces in your minds a belief that what is sought to be proved is more likely true than not true.

In determining whether any fact in issue has been proved by a preponderance of the evidence in the case, you may, unless otherwise

instructed, consider the testimony of all witnesses, regardless of who may have called them, and all exhibits received into evidence, regardless of who may have produced them.

Instruction No. 3

OPINION EVIDENCE - EXPERT WITNESS

Witnesses who, by education and experience, have become expert in some art, science, profession, or calling, may state an opinion as to relevant and material matters in which they profess to be expert, and may also state their reasons for the opinion.

You should consider each expert opinion and give it such weight as you think it deserves. If you should decide that the opinion of an expert witness is not based upon sufficient education and experience, or if you should conclude that the reasons given in support of the opinion are not sound, or that the opinion is outweighed by other evidence, you may disregard the opinion entirely.

Instruction No. 4

42 U.S.C. § 1983

Title 42 of the United States Code, section 1983 provides as follows:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any state or territory or the district of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the constitution and laws, shall be liable to the party injured . . .

Section 1983 is the statute that allows citizens to collect damages from a local government or its officers for violations of a citizen's Constitutional rights.

Instruction No. 5

ELEMENTS §1983 LIABILITY

For Plaintiff to hold the Board of County Commissioners of Oklahoma County liable under §1983, she must demonstrate:

- (1) that Mr. Holdstock was deprived of a constitutional right;
- (2) that a Board of County Commissioner of Oklahoma County or Jail policy, custom or practice was the moving force behind the constitutional deprivation; and,
- (3) the execution of the policy, custom or practice caused the injury to Mr. Holdstock.

Instruction No. 6

CONSTITUTIONAL RIGHT

Plaintiff alleges the Constitutional Right violated was Mr. Holdstock's Eighth Amendment Right to be free from cruel and unusual punishment. A part of that right requires that pretrial detainees such as Mr. Holdstock be given access to adequate medical care. To establish that Defendant violated Mr. Holdstock's Eighth Amendment right, Plaintiff must show that Defendant was deliberately indifferent to Mr. Holdstock's serious medical needs.

To make the required showing of deliberate indifference, Plaintiff must prove each of the following:

- (1) That Mr. Holdstock had a serious medical need;
- (2) That Defendant was aware of Mr. Holdstock's serious medical need;
- (3) That Defendant with "deliberate indifference," failed to provide the necessary medical care, or disregarded an excessive risk to Mr. Holdstock's health;

- (4) That in so doing, Defendant acted under color of state law;
and,
- (5) That a policy, custom or practice of Defendant was the
cause of the harm to Mr. Holdstock.

You are instructed that the parties have agreed that any relevant
action was taken under color of state law.

Instruction No. 7

SERIOUS MEDICAL NEED

A “serious medical need” is one that has been diagnosed by a physician as requiring treatment, or one that is so obvious that even a lay person would easily recognize the necessity for medical attention.

Instruction No. 8

DELIBERATE INDIFFERENCE

“Deliberate Indifference” is a conscious or reckless disregard of the consequences of ones actions or inactions. To act deliberately means to act knowing the potential risk and choosing to disregard it. The potential wrongful act does not occur because of mistake or accident. While deliberate indifference requires more than mere negligence or lack of ordinary care, it does not require Plaintiff to show the actor was aware of the specific consequences of the action or inaction. Put another way, Plaintiff does not have to show that Defendant was aware that its action or inaction would result in the specific harm alleged or that Mr. Holdstock would be the specific person harmed.

Specific to the facts of this case, Plaintiff may show deliberate indifference by showing that Mr. Holdstock had a serious medical condition that was not treated, or by showing that the jail officials

prevented him from receiving treatment, denied him access to medical personnel capable of evaluating the need for treatment or failed to properly monitor his condition. A prison official who serves as a gatekeeper for access to medical care may be liable if that official delays or refuses to fulfill the gatekeeper role. Likewise, contracting with a medical provider such as CHMO does not relieve Defendant of its Constitutional duty to provide adequate medical care to persons such as Mr. Holdstock.

Deliberate indifference may also be shown if you find that Defendant knew or should have known that its action or failure to act was substantially certain to result in a Constitutional violation. Indeed, the failure to remedy ongoing Constitutional violations may be evidence of deliberate indifference.

Instruction No. 9

POLICY, CUSTOM OR PRACTICE

Plaintiff must establish that a policy, custom or practice was the moving force behind the injury. It is not necessary that the policy, custom or practice be formally approved. Rather, Plaintiff may meet her burden by showing the policy, custom or practice is so widespread as to be standard or normal course of conduct.

If Plaintiff proves by a preponderance of the evidence that Defendant had a pattern or practice of failing to provide adequate medical care, and that failure led to Mr. Holdstock's injury, she has established that a policy, custom or practice that was the moving force behind the injury.

Instruction No. 10

SHERIFF AS POLICYMAKER

You are instructed that Sheriff John Whetsel is the final decision maker for the Oklahoma County Jail. You are further instructed that any decision made by Sheriff Whetsel is binding on Defendant Board of County Commissioners of Oklahoma County. To the extent Sheriff Whetsel made decisions, or accepted the decisions of others to whom authority had been delegated, including CHMO, those decisions are binding on Defendant Board. If any of those decisions led to a violation of Mr. Holdstock's Constitutional Rights, you may find Plaintiff has established a policy, custom or practice.

Instruction No. //

DAMAGES

If you find that Plaintiff has established all parts of her claims, then you must determine the amount of damages, if any, to which she is entitled.

The fact that I instruct you on damages should not be taken as an indication one way or another whether Plaintiff is entitled to recover anything. This is entirely for you to decide.

If you find that Charles Holdstock suffered a legally recognized wrong or injury and you further find that the wrong or injury was proximately caused by the Defendant, then, and only then, should you proceed to consider the amount of damages to be awarded.

If you award damages, they must be reasonable and not speculative. You should award only such an amount that will fully and fairly compensate the Estate of Charles Holdstock for the injury he has suffered.

Instruction No. 12

MEASURE OF DAMAGES

In determining the amount of damages, if any, to be awarded Plaintiff, you should consider the following:

1. Burial expenses;
2. Mr. Holdstock's pain and suffering before death;
3. Mr. Holdstock's loss of earnings based upon the probable duration of the his life had not the injury occurred; and,
4. Mr. Holdstock's loss of the opportunity to enjoy the companionship of his family for the remainder of his life.

Instruction No. 13

NOMINAL DAMAGES

If you find in favor of Plaintiff, but find that Plaintiff's damages have no monetary value, the you must return a verdict in favor of Plaintiff and award damages in the nominal amount of \$1.00.

Instruction No. 14

CLOSING

After you retire to the jury room to deliberate, you should elect one person as your presiding juror. That person will preside over your deliberations and speak for you with the Court.

After you have elected your presiding juror, you may then begin your deliberations. You will then discuss the case with your fellow jurors to reach agreement, if you can do so. Each of you must decide the case for yourself, but you should do so only after you have considered all the evidence, discussed it fully with the other jurors, and listened to the views of your fellow jurors. Do not be afraid to change your opinion if the discussion persuades you that you should. But do not come to a decision simply because other jurors think it is right.

Your verdict must be based solely on the evidence and on the law as I have given it to you in these instructions. However, nothing that


I have said or done is intended to suggest what your verdict should be -- that is entirely for you to decide. You must not use any method of chance in arriving at your verdict, nor let sympathy or prejudice affect the outcome.

A verdict form will be sent to the jury room with you, along with these written instructions of the Court and the exhibits admitted into evidence during the trial. I suggest you study the verdict form early in your deliberations so you know what you must decide. The verdict must be unanimous; that is, all of you must agree on a verdict, and when you do, the presiding juror will sign the verdict. Notify the bailiff when you have arrived at a verdict so that you may return it to open court.

No member of the jury should ever attempt to communicate with me except by a signed writing. If it becomes necessary during your deliberation to communicate with me, you may send a note through the

You will note from the oath about to be taken by the bailiff that the bailiff, too, as well as other persons, is forbidden to communicate in any way or manner with any member of the jury on any subject touching the merits of the case.

In a few moments, you will go with the bailiff to the jury room to begin your deliberations. If any of you have cellular phones or similar devices with you, you are instructed to be sure that they are turned off and then to turn them over to the bailiff as you enter the jury room. They will be held by the bailiff for you and returned to you after your deliberations are completed and during any lunch break or similar period when you are not deliberating. The purpose of this requirement is to avoid any interruption or distraction during your deliberations and to avoid any question of outside contact with the jury during your deliberations.

 9/11/13

ROBIN J. CAUTHRON
UNITED STATES DISTRICT JUDGE